

**PROFFERS**  
**SPECTRUM DEVELOPMENT, LLC**  
**RZ 2014-MA-011**

**2.12.15**

Pursuant to Section 15.2-2303(a) of the Code of Virginia, 1950, as amended, the property Owners and Applicant in this Rezoning proffer that the development of the parcels under consideration and shown on the Fairfax County Tax Map as Tax Map Reference Nos. 61-2 ((18)) 0001, 0002, 0003, 0004, 0005, and 61-2 ((17)) (D) 0001, 0003, 0004, 0005 (hereinafter referred to as the "Property") will be in accordance with the following conditions if, and only if, said rezoning request for the C-6, CRD, H-C and S-C Districts for the Property is granted by the Board of Supervisors of Fairfax County, Virginia (the "Board"). In the event said application request is denied or the Board's approval is overturned by a court of competent jurisdiction, these proffers shall be null and void. The Owners and the Applicant, for themselves, their successors and assigns, agree that these proffers shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board, in accordance with applicable County and State statutory procedures.

**GENERAL**

1. Substantial Conformance. Development of the Property shall be in substantial conformance with the Generalized Development Plan and Special Exception Plat entitled "The Shops at Baileys Crossroads" (the "GDP"), prepared by Kimley-Horn and Associates, Inc., and last dated 1/29/15.
2. Minor Modifications. In addition to that described above, pursuant to Paragraph 4 of Section 18-204 of the Zoning Ordinance, minor modifications to the GDP and these proffers may be permitted as determined by the Zoning Administrator.

3. Maximum Intensity. The Applicant reserves the right to construct a lesser amount of Gross Floor Area ("GFA") from that shown on the GDP provided that the buildings and Property remain in substantial conformance with that shown on the GDP as determined by the Zoning Administrator.

4. Architecture.

A. The final architectural design shall be in substantial conformance with the general type, quality and proportion of materials depicted in the elevations, and sections shown on the GDP. The materials on the building façade shall include, without limitation, brick, azek, EIFS and/or Hardie-board siding and shall be graffiti resistant.

B. Rooftop Equipment. Rooftop mechanical equipment will be shielded from view from the nearby public roads using parapet walls and designed not to exceed roof coverage limitations of the Zoning Ordinance. Other screening measures may be used such as including the facilities as part of the architecture of the buildings, utilizing compatible colors.

5. Unifying Elements. All street furniture, including garbage cans, benches and lamp posts, shall be consistent, both in terms of materials and design, throughout the development.

6. Signage.

A. All signage shall comply with Article 12 of the Zoning Ordinance. Pole signs, inflatable signs, pennants, flashing signs, balloons, ground waver signs, sail banner signs and signs powered by mechanical means shall not be permitted on the Property. All directional and way finding signage shall be consistent, both in terms of materials and design, throughout the development. No signs on the building fronting Washington Drive shall be mounted on the South façade. Any building mounted signs which face south shall not be internally lit with

translucent panels. The monument sign shall be limited in height to six (6) feet.

Notwithstanding any exhibit to the contrary, the monument sign shall be placed in the pedestrian plaza area as shown on Sheet 3 of the GDP. There shall not be any lit signs in storefront windows. No temporary A-frame type signs or live individuals holding signs shall be used at the Property.

B. A metal plaque shall be installed and displayed in the vicinity of the Leesburg Pike frontage of the Property and be visible to pedestrians walking along Leesburg Pike. The plaque shall have a summary of a significant historic happening in the Baileys Crossroads area. The language on the plaque shall be shared with the Supervisor's office and Baileys Crossroads/Seven Corners Revitalization Corporation for their comment prior to installation.

7. Charles Street Right of Way. The area shown on the GDP which is labeled "Proposed Right of Way Dedication" shall be dedicated, in fee simple, as public Right Of Way to Fairfax County Board of Supervisors at no cost upon site plan approval of the project. The Applicant shall request a license, or the County shall grant a license, that allows the Applicant to use, maintain and landscape the said area until it is used for the road realignment.

8. Leesburg Pike Right of Way and Turn Lane Extension. The area shown on the GDP which is labelled "Proposed Right of Way Dedication" shall be dedicated, in fee simple, to Fairfax County Board of Supervisors at no cost upon site plan approval of the Project. If approved by the Virginia Department of Highways and Transportation ("VDOT") and the Fairfax County Department of Transportation ("DOT"), the eastbound right turn lane shall be extended from its current terminus eastward to Washington Drive. Curb and Gutter shall be installed along the entire Leesburg Pike frontage. Pavers or other equivalent material shall be used in the Leesburg Pike sidewalk as shown on the GDP subject to VDOT approval.

The Applicant shall enter into a maintenance agreement with VDOT for the maintenance or replacement, in-kind, by the Applicant, of streetscape elements, installed by the Applicant, that are located in the public right-of-way, excluding vegetation removed by the County and/or VDOT. The Applicant may request a license to use a portion of the area dedicated for outdoor seating and similar uses.

Sidewalks for the development shall connect to the County's crosswalk project on Leesburg Pike.

9. Charles Street Improvements. A northbound right turn lane shall be provided along Charles Street at Leesburg Pike in accordance with VDOT requirements.

10. Washington Drive Improvements. The existing pavement on Washington Drive at Leesburg Pike shall be restriped to allow an additional northbound right turn lane, in accordance with VDOT requirements.

11. Green Building Practices. Prior to the issuance of a building permit for each of the three buildings (individually a "Building"), the Applicant will post a "green building escrow," in the form of cash or a letter of credit from a financial institution acceptable to DPWES as defined in the Public Facilities Manual, in the amounts as set forth below. The escrow will be divided among the three buildings as follows:

- |   |             |
|---|-------------|
| • Pharmacy                                  | \$80,000.00 |
| • Retail building fronting Route 7          | \$25,000.00 |
| • Retail building fronting Washington Drive | \$10,000.00 |

This escrow will be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of certification, by the U.S. Green Building Council, for each building, under the most current version of the U.S. Green Building Council's

("USGBC") Leadership in Energy and Environmental Design – New Construction ("LEED®-NC") rating system or other LEED® rating system determined, by the USGBC, to be applicable to the Building. The provision to the Environment and Development Review Branch of DPZ of documentation of the USGBC preliminary review of the design oriented credits that along with the anticipated construction credits will be sufficient to support the attainment of LEED® certified, or documentation from the USGBC that the Building has attained LEED® certification will be sufficient to satisfy this commitment. If the Applicant fails to provide documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED® certification within two years of issuance of the final non-RUP for each of the Buildings, the escrow for the non-complying building or buildings will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

If the Applicant provides to the Environment and Development Review Branch of DPZ, within two years of issuance of the final non-RUP for each of the buildings, documentation demonstrating that LEED® certified status for any Building has not been attained but that the Building has been determined by the USGBC to fall within three points of attainment of LEED® certified status, 50% of the escrow will be released to the Applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

If the Applicant fails to provide, within two years of issuance of the final non-RUP for any building, documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED® certified status or demonstrating that the Building has fallen short of certification by three points or less, after sufficient written notice to the Applicant,

the entirety of the escrow for the Building will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

If the Applicant provides documentation from the USGBC demonstrating, to the satisfaction of the Environment and Development Review Branch of DPZ, that USGBC completion of the review of the LEED® certified application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made to the Applicant or to the County during the extension.

The Applicant will include, as part of the site plan submission for each Building, a statement certifying that a LEED®-accredited professional who is also a professional engineer or licensed architect is a member of the design team, and that the LEED®-accredited professional is working with the team to incorporate sustainable design elements and innovative technologies into the Building with a goal of having the Building attain LEED® certified status.

The Applicant will include, as part of the site plan submission and building plan submission for the Building, a list of specific LEED® credits that the Applicant intends to pursue.

Prior to site plan approval for the Building, the Applicant will designate the Chief of the Environment and Development Review Branch of DPZ as a team member in the USGBC's LEED® online system. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED® credits and will not be provided within the authority to modify any documentation or paperwork.

12. Stormwater Management.

A. Stormwater Management ("SWM") Facilities. Subject to review and approval by the Department of Public Works and Environmental Services (DPWES), stormwater management and Best Management Practices (BMP) measures for the Property shall be provided through the use of an underground stormwater detention facility and a bioretention area, as shown on the GDP. Other innovative BMP measures such as, but not limited to biofiltration swales or pervious pavers may be substituted as determined by the Applicant and approved by DPWES. Any innovative BMP measures shall be maintained by the Applicant, in accordance with the procedures as determined by DPWES.

13. Landscaping.

A. Landscaping and Landscaped Open Space. The site plan submitted for the development shall include a landscape plan consistent with that on Sheet 4 of the GDP. The Applicant shall maintain the proposed landscaping as shown on the GDP and any diseased or dead trees shall be replanted at the next spring or fall planting season. All new deciduous trees provided as shown on such landscape plan, shall be a minimum of 2 to 2.5 inches in caliper at the time of planting. All new evergreen trees used in peripheral screening and landscaping areas and public spaces shall be a minimum of six feet (6') in height at the time of planting. Such landscape plan shall be provided in substantial conformance with the landscaping concepts shown on the GDP as determined and approved by the Urban Forest Management Division ("UFMD").

B. Additional Landscaping. In the triangular area that is being dedicated for the realignment of Charles Street and being maintained by the Applicant until road improvements are completed, additional landscaping consisting of low ground barriers, supplemental ground

cover, attractive paving, such as pavers or an equivalent material, and/or street furniture shall be installed to protect vegetation and landscaping in that area from damage caused by pedestrian traffic.

C. Landscape Pre-Inspection Meeting. Prior to installation of plants to meet requirements of the approved landscape plan, the Contractor/Developer shall coordinate a pre-installation meeting on site with the landscape contractor and a representative of the County Urban Forest Management Division (UFMD). Any proposed changes to the location of planting, size of trees/shrubs, and any proposed plant substitutions for species specified on the approved plan shall be reviewed at this time and must be approved prior to planting. The installation of plants not specified on the approved plan, and not previously approved by UFMD, may require submission of a revision to the landscape plan or removal and replacement with approved material. Field location of planting material, when required by the approved plan, shall be reviewed at the pre-installation meeting. The Landscape Contractor shall stake proposed individual planting locations in consultation with the Contractor/Developer prior to the pre-installation meeting, for review by UFMD staff. Stakes shall be adjusted, as needed, during the course of the meeting as determined by UFMD staff based on discussion with the Contractor/Developer and the Landscape Contractor.

D. Tree Replacement. The contractor/developer shall install a minimum of six (6) new *Ilex opaca* (American Holly), or other similar species approved by the Urban Forester, at 10-foot size as part of the overall plantings in the transitional screening buffer adjacent to the southern property line. The final location and cultivar selection shall be subject to the approval of the UFMD.



E. Native Species Landscaping. All landscaping provided shall be native or regionally adapted to the middle Atlantic region to the extent feasible and non-invasive as determined by the Mid-Atlantic Exotic Pest Plant Council Plant List or Virginia DCR. In addition, the quality and quantity of landscaping provided shall be in substantial conformance with the GDP.

14. Location of Utilities. Along all existing and proposed public rights-of-way, utility lines shall be generally located so as not to interfere with the landscaping concepts shown on the GDP. The Applicant reserves the right to make minor modifications to relocate such landscaping to reasonably accommodate utilities lines and Virginia Department of Transportation (VDOT) sight distances provided such relocated landscaping shall retain a generally equivalent number of plantings and continues to reflect the concepts illustrated on the GDP and shall conform to the tree canopy calculations specified in the Fairfax County Public Facilities Manual (PFM). Any tree or shrub determined to impact utilities lines and sight distance shall be replaced with an appropriate size or relocated elsewhere on the site with equal size and quality, as determined by UFMD. For all other areas of the Property, in the event that, during the process of site plan review any landscaping shown on the GDP cannot be installed in order to locate utility lines, as determined by DPWES, then an area of additional landscaping consistent of equivalent flora generally consistent with that displaced shall be substituted at an alternate location on the Property, subject to approval by UFMD. The Applicant shall not place utility vaults under sidewalk and bicycle facilities designated for dedication for public use.

## MISCELLANEOUS PROFFERS

### 15. Trash.

A. All outdoor trash receptacles shall conform to the standards set forth in the Public Facilities Manual for the screening of such receptacles. The Applicant shall: (a) provide trash cans in the general vicinity of any outdoor seating and patio area; (b) provide for the removal of trash bi-weekly from this area, if any; and (c) generally clean and clear any outdoor seating and patio area of trash daily. The Applicant shall arrange for any site clean-up by mechanical equipment to occur no earlier than 7 a.m. and no later than 9 p.m. Trash removal by emptying the dumpsters shall take place twice a week and shall occur between the hours of 8:00 a.m. and 6:00 p.m., Monday through Saturday. Trash pickup shall occur more often if necessary.

B. A screening wall shall be installed to screen any dumpsters placed on the Property which shall be constructed of masonry materials that match those used on the buildings. Doors shall remain closed except during the times that trash is being removed.

16. Food Odor. The Applicant shall not allow the discharge of air contaminants/objectionable odors generated by the restaurants, if any, or their solid waste. For any restaurant located on the Property, the Applicant shall employ, but not be limited to, the following control measures:

A. All putrescible material as defined by the Fairfax County Code Section 109-1-1-2, shall be stored in sealed containers and shall be disposed in a container(s) reserved exclusively for use by the restaurant(s). Such putrescible material shall not be shredded or unsealed.

B. All putrescible materials shall be removed from the subject property by a commercial refuse hauler as needed, Monday through Saturday. These standards shall be in

addition to any other performance standards, regulations, ordinances, or restrictions promulgated by the County.

17. Parking Enforcement.

A. The Applicant shall prohibit parking of vehicles by people not visiting the shopping center and shall provide signage to alert the public of the restricted parking in accordance with applicable law. The Applicant shall maintain a contract with a towing service and have parked vehicles which are in violation towed from the Property at the violator's expense.

18. The Applicant shall provide bicycle racks as shown on the GDP. The total number of bike parking/storage spaces and design of the bike racks shall be consistent with the Fairfax County Policy and Guidelines for Bicycle Parking, as determined at site plan.

19. Outdoor Construction. Outdoor construction of the improvements on the Property shown on the GDP shall take place only during the hours from 7:00 a.m. to 9:00 p.m. Monday through Friday and from 8:00 a.m. to 6:00 p.m. on Saturday. There shall be no outdoor construction activity taking place on Sunday. There will be no outdoor construction on New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and Christmas Day. The permitted hours of construction shall be posted on-site in both English and Spanish. There shall be no parking of construction vehicles on Charles Street or Washington Drive.

20. Construction Vehicles. During initial construction, and any subsequent major construction activity, all construction vehicles and construction material vehicles shall ingress and egress to the site from the Route 7 side of the Property. No construction vehicles shall utilize Washington Drive or Charles Street south of the entrance to the Property for ingress and

egress to the site. This direction to the contractors and sub-contractors shall be set forth in the contracts. Deliveries of construction materials shall only occur between 5:00 a.m. through 6:00 p.m., seven (7) days a week.

21. Community Liaison. The Applicant agrees to identify a person(s) who will serve as liaison to the community throughout the duration of construction. This individual shall oversee the construction during the hours of construction, including weekends, if applicable, upon receiving reasonable notice to be on-site. The name and telephone number of the individual(s) shall be posted at the entrance of the project.

22. Deliveries.

A. The Applicant shall direct the tenants to require that all deliveries utilize ingress and egress to the site via Route 7. No delivery vehicles shall utilize Washington Drive or Charles Street south of the entrance to the Property for ingress and egress to the site. On-site deliveries by class 7 or class 8 heavy duty trucks with GVWR greater than 26,000 lbs. shall only occur between 5:00 a.m. through 9:00 a.m., seven (7) days a week. All other deliveries shall only occur between 5:00 a.m. and 9:00 p.m., seven (7) days a week. Trucks making deliveries shall not park on Washington Drive while loading or off loading supplies. Trucks that are parked or standing to make deliveries shall not remain idling and signs stating that shall be conspicuously posted in the loading area. Trucks in excess of 18 feet in length shall use the site loading area and shall not block entrances and/or exits to the Property. Trucks less than 19 feet in length shall use the site loading area or park in a manner that does not obstruct parking spaces. These directions to the tenants shall be via rules and regulations incorporated into the shopping center leases governing the operation of the shopping center.

B. Cones shall be placed in the parking spots along the east side of the pharmacy building to discourage visitor parking prior to scheduled deliveries to the pharmacy and shall be promptly removed upon completion of the delivery.

23. Lights. Full cutoff lighting shall be utilized and light fixtures shall be used that do not let light spill into the residential neighborhood southeast of the property.

24. Barrier Wall. The materials to be used in the rear screening barrier shall be brick as shown in the GDP. Piping or weep holes shall be placed at the bottom of the wall and shall remain unobstructed to allow water to pass through.

25. Donation Boxes. No donation boxes for clothing, books, etc. or outdoor vending machines shall be allowed on the property.

26. Off-Site Landscaping and Paving. The Applicant will reimburse the owner of the property with a street address of 3407 Washington Drive, Falls Church, Virginia, 22041 (the "DeFalco Property") for certain landscaping and driveway improvements to the DeFalco Property. These improvements will include extending the fence on their northern boundary and installing screening landscaping or fence in the front of the DeFalco Property and installing a vehicle turn around space to the driveway. The Applicant shall reimburse the owner of the DeFalco Property up to Ten Thousand Dollars (\$10,000.00) for the cost of implementing the above described improvements. Said reimbursement shall be made in one or more installments within fifteen days of delivery to the Applicant of the contractor's invoice or invoices together with a written certification from said contractor and DeFalco (or her representative) that the invoiced work has been completed. Completion of said described improvements shall be no later than June 30, 2016, or this obligation shall lapse. Delivery to the County of copies of the paid

invoices and checks issued for the payment of the above described work shall be deemed to be sufficient to demonstrate compliance with this proffer.

27. Bus Shelter. Prior to site plan approval, the Applicant shall pay the County or an entity of their assigns \$5,000.00 to relocate the existing bus shelter on Route 7 frontage in coordination with and for approval by FCDOT. The Applicant shall be responsible for constructing the bus shelter pad on Leesburg Pike frontage for the bus shelter to be relocated back on the frontage after frontage improvement is completed. The construction and the location of the bus shelter pad shall be coordinated with and approved by FCDOT prior to site plan approval. The future bus shelter should have a minimum of 5-ft. landing pad from the curb and an ADA compliant sidewalk connection. The applicant shall maintain access to the existing bus stop during the construction of the site and ensure that there is temporary, ADA compliant pedestrian access to the existing bus stop on its Leesburg Pike frontage. The provision of the said temporary pedestrian access shall be determined by DPWES in coordination with FCDOT prior to site plan approval.

28. Single Beers. The pharmacy or any other retail sales establishment that holds a Virginia ABC license which permits the sale of beer for off-premises consumption shall not sell single cans or bottles of beer.

29. Consumer Lenders. Any consumer lenders located on the Property shall be approved for insurance by the Federal Deposit Insurance Corporation (FDIC), the Securities Investor Protective Corporation (SIPC) or the National Credit Union Share Insurance Fund (NCUSIF).

30. Pharmacy Facades. The façade along the Leesburg Pike frontage and along the east façade of the pharmacy building shall include display windows with exhibits depicting

historic themes that are determined by the pharmacy to comply with copyright requirements.

The exhibits shall be shared with the Supervisor's office and the Baileys Crossroads/Seven Corners Revitalization Corporation for their comment prior to installation. Advertising shall not be placed in any windows along either the Leesburg Pike or eastern frontages of the pharmacy building.

31. Additional Right-of-Way. The Applicant shall reserve additional right-of-way in the vicinity of the bus stop as shown on the GDP as needed for implementation of a cycle track project along Leesburg Pike. Once a cycle track project has been finally designed, approved and funded that requires said reservation area, that area shall be dedicated in fee simple upon demand to the Fairfax County Board of Supervisors.

32. Speakers. No outdoor speakers of any kind shall be installed on the Property excepting a building mounted intercom for use at the drive through window and music for the patio seating area on Leesburg Pike.

33. Bicycle Racks. The final number, location, and design of the proposed bike racks shall be determined by DPWES in coordination with and the FCDOT Bicycle Coordinator or his/her designee prior to site plan approval for the proposed development. The bicycle parking facilities shall be consistent with the Fairfax County Policy and Guidelines for Bicycle Parking for the proposed development.

34. Successors and Assigns. These proffers shall bind and inure to the benefit of the Applicant and its successors and assigns. Each reference to "Applicant" in these proffers shall include and be binding upon the Applicant's successor(s) in interest and/or developer(s) of any portion of the Property.

35. Counterparts. These proffers may be executed in one or more counterparts, each of which when so executed shall be deemed an original document and all when taken together shall constitute but one and the same instrument.

[SIGNATURES TO APPEAR ON THE FOLLOWING PAGES]



Applicant:

Spectrum Development, LLC

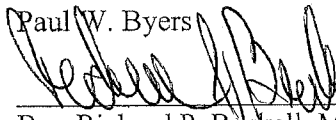
By: 

Name: Richard P. Buskell

Title: Managing Member

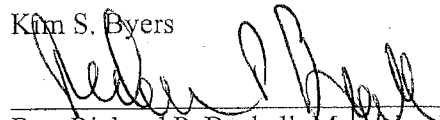
Owner:

Paul W. Byers



By: Richard P. Buskell, Managing Member of  
Spectrum Development, LLC,  
as Power of Attorney

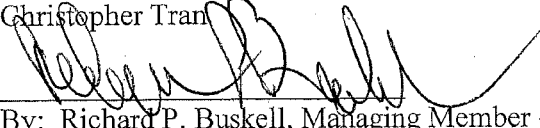
Kim S. Byers




By: Richard P. Buskell, Managing Member of  
Spectrum Development, LLC,  
as Power of Attorney

Owner:

Christopher Tran

  
By: Richard P. Buskell, Managing Member of  
Spectrum Development, LLC,  
as Power of Attorney

Christina Tran

  
By: Richard P. Buskell, Managing Member of  
Spectrum Development, LLC,  
as Power of Attorney

Owner:

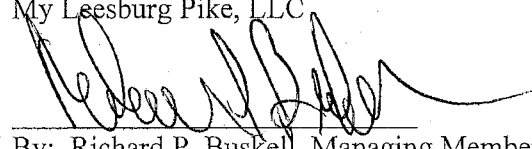
Culmore Properties, LLC

A handwritten signature in black ink, appearing to read 'Richard P. Buskell', written over a horizontal line.

By: Richard P. Buskell, Managing Member of  
Spectrum Development, LLC,  
as Power of Attorney

Owner:

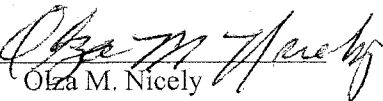
My Leesburg Pike, LLC

A handwritten signature in black ink, appearing to read 'Richard P. Buskell', is written over a horizontal line.

By: Richard P. Buskell, Managing Member of  
Spectrum Development, LLC,  
as Power of Attorney

Owner:

Government Employees Insurance Company

By:   
Its: Olga M. Nicely  
Chairman